

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

United States of America,)	
)	
Plaintiff,)	ORDER
)	
vs.)	
)	Case No. 1:23-cr-222
Nelson Franklin Duran, III,)	
)	
Defendant.)	

On November 17, 2023, the United States filed a "Motion to Amend Indictment to Correct Defendant's Name." (Doc. No. 4). It seeks the Court's authorization to file an Amended Indictment correcting the name of the Defendant from "Nelson Franklin Duran, III," as stated in the Indictment, to "Nelson Franklin Duran, Jr." It asserts that the latter is Defendant true legal name. It further asserts it is permissible to amend the Indictment as it has proposed without having to submit the matter to the grand jury. See Russell v. United States, 369 U.S. 749, 770 (1962) (holding that it is a “settled rule in the federal courts that an indictment may not be amended except by re-submission to the grand jury, unless the change is merely a matter of form”); United States v. Mason, 869 F.2d 414, 417 (8th Cir. 1989) (“Misnomers generally are mistakes of form that may be corrected by amending the indictment.”).

The name change proposed by the United States to correct a misnomer of Defendant is one of form as opposed to substance. Such a change is permissible by amendment and without re-submission to the grand jury. The United States' motion (Doc. No. 4) is therefore **GRANTED** and the United States is authorized to file an Amended Indictment as proposed.

IT IS SO ORDERED.

Dated this 20th day of November, 2023.

/s/ Clare R. Hochhalter

Clare R. Hochhalter, Magistrate Judge
United States District Court